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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

13

PERSIS KNIPE, an individual, on behalf
of herself, on behalf of all persons
similarly situated,

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Plaintiff,

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vs.

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AMAZON.COM, INC., a Corporation;
AMAZON LOGISTICS, INC., a
Corporation; and DOES 1 through 50,
inclusive,

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Defendants.

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Case No. 3:17-cv-01889-WQH-JMA

**FIRST AMENDED CLASS
ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. &
PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM
WAGES IN VIOLATION OF CAL.
LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME
WAGES IN VIOLATION OF CAL.
LAB. CODE §§ 510, 1194 & 1198, *et
seq.*;
4. FAILURE TO PROVIDE
ACCURATE ITEMIZED
STATEMENTS IN VIOLATION OF
CAL. LAB. CODE § 226;
5. FAILURE TO REIMBURSE
EMPLOYEES FOR REQUIRED
EXPENSES IN VIOLATION OF
CAL. LAB. CODE § 2802.;and,
6. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT
[LABOR CODE §§ 2698, *et seq.*].

DEMAND FOR A JURY TRIAL

1 Plaintiff Persis Knipe ("PLAINTIFF"), an individual, on behalf of herself and all
2 other similarly situated current and former employees, alleges on information and belief,
3 except his own acts and knowledge, the following:

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INTRODUCTION

6 1. Defendant Amazon.com, Inc. and Amazon Logistics, Inc. (collectively
7 "DEFENDANT") in order to service customers hires workers to aid DEFENDANT in
8 providing delivery services to DEFENDANT's customers. The cost, as proscribed by
9 law, of the personnel hired to work for DEFENDANT, includes not only the pay of these
10 employees but the cost of the employer's share of tax payments to the federal and state
11 governments for income taxes, social security taxes, medicare insurance, unemployment
12 insurance and payments for workers' compensation insurance ("Business Related
13 Expenses"). To avoid the payment of these legally proscribed Business Related
14 Expenses to the fullest extent possible, DEFENDANT devised a scheme to place the
15 responsibility for the payment of these costs and expenses of DEFENDANT on the
16 shoulders of PLAINTIFF and other Delivery Drivers. As employer, DEFENDANT is
17 legally responsible for the payment of all these Business Related Expenses. This lawsuit
18 is brought on behalf of these Delivery Drivers who worked for DEFENDANT in
19 California and were classified as independent contractors, in order to collect the wages
20 due them as employees of DEFENDANT, the cost of the employer's share of payments
21 to the federal and state governments for income taxes, social security taxes, medicare
22 insurance, unemployment insurance and payments for workers' compensation insurance,
23 plus penalties and interest.

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THE PARTIES

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2. DEFENDANT is a corporation which, at all relevant times mentioned
herein, conducted and continues to conduct substantial and regular business in the State
of California.

1 3. PLAINTIFF has worked for DEFENDANT as a Delivery Driver since June
2 of 2017 and has been classified by DEFENDANT as an independent contractor during
3 her entire employment with DEFENDANT.

4 4. California Labor Code Section 226.8 provides that “[i]t is unlawful for any
5 person or employer to engage in . . . [w]illful misclassification of an individual as an
6 independent contractor.” The penalty for willful misclassification of employees is a
7 “civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen
8 thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines
9 permitted by law.” It is further provided that, in the event that an employer is found to
10 have engaged in “a pattern or practice of these violations,” the penalties increase to “not
11 less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars
12 (\$25,000) for each violation, in addition to any other penalties or fines permitted by
13 law.” Cal. Labor Code § 226.8.

14 5. Here, DEFENDANT has willfully misclassified PLAINTIFF and other
15 Delivery Drivers as described in Cal. Labor Code § 226.8, and further, that
16 DEFENDANT has engaged in a “pattern or practice” of such violations as contemplated
17 by the California Labor Code.

18 6. Upon hire, the position of a Delivery Driver was represented by
19 DEFENDANT to PLAINTIFF and the other Delivery Drivers as an independent
20 contractor position capable of paying a flat rate of pay for certain shifts. PLAINTIFF
21 and other Delivery Drivers are not compensated overtime wages for any of their time
22 spent working in excess of eight (8) hours in a workday, twelve (12) hours in a workday,
23 and/or forty (40) hours in a workweek. PLAINTIFF and other Delivery Drivers are paid
24 the hourly rate to perform delivery services on DEFENDANT’s behalf. PLAINTIFF and
25 other Delivery Drivers are not compensated any other wages besides the flat rate.
26 However, it often takes PLAINTIFF and the other Delivery Drivers more time to
27 complete their deliveries than their scheduled shifts, but drivers do not receive additional
28 compensation for this extra time.

1 7. To perform their job duties, PLAINTIFF and the other Delivery Drivers
2 perform work subject to the control of DEFENDANT in that DEFENDANT has the
3 authority to exercise complete control over the work performed and the manner and
4 means in which the work is performed. DEFENDANT provides the customers,
5 DEFENDANT provides the instructions regarding where to make deliveries, in what
6 order, and which route to take. PLAINTIFF and other Delivery Drivers can be penalized
7 or terminated for missing scheduled shifts. DEFENDANT also instructs PLAINTIFF
8 and other Delivery Drivers as to how to conduct themselves with DEFENDANT's
9 customers, what time to make their deliveries, how to scan packages, and how to
10 properly pick up and return packages at DEFENDANT's warehouses. i.
11 California Labor Code § 3357 defines "employee" as "every person in the service of an
12 employer under any appointment or contract of hire or apprenticeship, express or implied,
13 oral or written, whether lawfully or unlawfully employed." In addition to the California
14 Labor Code's presumption that workers are employees, the California Supreme Court
15 has determined the most significant factor to be considered in distinguishing an
16 independent contractor from an employee is whether the *employer or principal has*
17 *control or the right to control the work both as to the work performed and the manner*
18 *and means in which the work is performed.* DEFENDANT heavily controls both the
19 work performed and the manner and means in which PLAINTIFF and the other Delivery
20 Drivers perform their work in that:

21 (a) PLAINTIFF and other Delivery Drivers are not involved in a distinct
22 business, but instead are provided with instructions as to how to perform their work and
23 the manner and means in which the work is to be performed by means of
24 DEFENDANT's manuals and written instructions;

25 (b) PLAINTIFF and other Delivery Drivers are continuously provided
26 with training and supervision, including following DEFENDANT's company documents
27 and receive training from DEFENDANT as to how and in what way to perform the
28 delivery services;

1 (c) DEFENDANT sets the requirements as to what policies and
2 procedures all of the Delivery Drivers were to follow, including how and when to deliver
3 DEFENDANT's packages;

4 (d) PLAINTIFF and other Delivery Drivers have no opportunity for
5 profit or loss because DEFENDANT only pays these workers based on their scheduled
6 shifts;

7 (e) PLAINTIFF and other Delivery Drivers perform delivery services
8 which is part of DEFENDANT's principal business and is closely integrated with and
9 essential to the employer's business of providing on demand delivery services to their
10 customers;

11 (f) PLAINTIFF and other Delivery Drivers perform the work themselves
12 and do not hire others to perform their work for them;

13 (g) PLAINTIFF and other Delivery Drivers do not have the authority to
14 make employment-related personnel decisions;

15 (h) PLAINTIFF and other Delivery Drivers perform their work in a
16 particular order and sequence in accordance with DEFENDANT's company policy; and,

17 (i) DEFENDANT has the "right" to control every critical aspect of
18 DEFENDANT's daily delivery services operations.

19 8. As a result, stripped of all the legal fictions and artificial barriers to an
20 honest classification of the relationship between PLAINTIFF and all the other Delivery
21 Drivers on the one hand, and DEFENDANT on the other hand, PLAINTIFF and all the
22 other Delivery Drivers are and were employees of DEFENDANT and not independent
23 contractors of DEFENDANT and should therefore be properly classified as non-exempt,
24 hourly employees.

25 9. PLAINTIFF brings this Class Action on behalf of herself and a California
26 class, defined as all individuals who worked for DEFENDANT in California as Delivery
27 Drivers and who were classified as independent contractors (the "CALIFORNIA
28 CLASS") at any time during the period beginning four (4) years prior to the filing of this

1 Complaint and ending on the date as determined by the Court (the "CALIFORNIA
 2 CLASS PERIOD"). The amount in controversy for the aggregate claim of
 3 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

4 10. As a matter of company policy, practice and procedure, DEFENDANT has
 5 unlawfully, unfairly and/or deceptively classified every CALIFORNIA CLASS Member
 6 as "independent contractors" in order to unlawfully avoid compliance with all applicable
 7 federal and state laws that require payment for all time worked, business expenses, and
 8 the employer's share of payroll taxes and mandatory insurance. As a result of the scheme
 9 to defraud the federal and state governments and the CALIFORNIA CLASS Members,
 10 PLAINTIFF and the CALIFORNIA CLASS Members are underpaid throughout their
 11 employment with DEFENDANT. The true names and capacities, whether individual,
 12 corporate, associate or otherwise of the Defendants sued here as DOES 1 through 50,
 13 inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants
 14 by such fictitious names pursuant to Fed. R. Civ. Proc. 17. PLAINTIFF is informed and
 15 believes, and based thereon, alleges that each of the Defendants designated herein is
 16 legally responsible in some manner for the unlawful acts referred to herein. PLAINTIFF
 17 will seek leave of Court to amend this Complaint to reflect the true names and capacities
 18 of the Defendants when they have been ascertained and become known.

19 11. The agents, servants and/or employees of the Defendants and each of them
 20 acting on behalf of the Defendants acted within the course and scope of his, her or its
 21 authority as the agent, servant and/or employee of the Defendants, and personally
 22 participated in the conduct alleged herein on behalf of the Defendants with respect to the
 23 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable
 24 to the other Defendants and all Defendants are jointly and severally liable to the
 25 PLAINTIFF and the other members of the CLASS, for the loss sustained as a proximate
 26 result of the conduct of the Defendants' agents, servants and/or employees.

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1 **THE CONDUCT**

2 12. The finite set of tasks required of PLAINTIFF and the other CALIFORNIA
3 CLASS Members as defined by DEFENDANT is executed by them through the
4 performance of non-exempt labor.

5 13. Although PLAINTIFF and the other CALIFORNIA CLASS Members
6 perform non-exempt labor subject to DEFENDANT's complete control over the manner
7 and means of performance, DEFENDANT instituted a blanket classification policy,
8 practice and procedure by which all of these CALIFORNIA CLASS Members are
9 classified as "independent contractors" exempt from compensation for overtime worked,
10 meal breaks and rest breaks, and reimbursement for business related expenses. By
11 reason of this uniform misclassification, the CALIFORNIA CLASS Members are also
12 required to pay DEFENDANT 's share of payroll taxes and mandatory insurance
13 premiums. As a result of this uniform misclassification practice, policy and procedure
14 applicable to PLAINTIFF and the other CALIFORNIA CLASS Members who perform
15 this work for DEFENDANT, DEFENDANT committed acts of unfair competition in
16 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200,
17 *et seq.* (the "UCL"), by engaging in a company-wide policy, practice and procedure
18 which uniformly fails to properly classify PLAINTIFF and the other CALIFORNIA
19 CLASS Members as employees and thereby fails to pay them wages for all time worked,
20 reimbursement of business related expenses, fails to provide them with meal and rest
21 breaks, and fails to reimburse these employees for the employer's share of payroll taxes
22 and mandatory insurance. The proper classification of these employees is
23 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the
24 obligation to meet this burden, DEFENDANT violated the California Labor Code and
25 regulations promulgated thereunder as herein alleged. DEFENDANT does not have in
26 place a policy, practice or procedure that provides meal and/or rest breaks to PLAINTIFF
27 and CALIFORNIA CLASS Members as evidenced by DEFENDANT's business records
28 which contain no record of these breaks.

1 14. DEFENDANT, as a matter of law, has the burden of proving that employees
 2 are properly classified and that DEFENDANT otherwise complies with applicable laws.
 3 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified
 4 all the CALIFORNIA CLASS Members as independent contractors.

5 15. PLAINTIFF and all the CALIFORNIA CLASS Members are and were
 6 uniformly classified and treated by DEFENDANT as independent contractors at the time
 7 of hire and thereafter, DEFENDANT failed to take proper steps to determine whether the
 8 PLAINTIFF and the CLASS Members are properly classified under the applicable
 9 Industrial Welfare Commission Wage Order and Cal. Lab. Code §§ 510, *et seq.* as
 10 exempt from applicable labor laws. Since DEFENDANT affirmatively and willfully
 11 misclassified PLAINTIFF and CALIFORNIA CLASS Members in compliance with
 12 California labor laws, DEFENDANT's practices violated and continue to violate
 13 California law. In addition, DEFENDANT acted deceptively by falsely and fraudulently
 14 classifying PLAINTIFF and each CALIFORNIA CLASS Member as independent
 15 contractors when DEFENDANT knew or should have known that this classification was
 16 false and not based on known facts. DEFENDANT also acted deceptively by violating
 17 the California labor laws, and as a result of this policy and practice, DEFENDANT also
 18 violated the UCL. In doing so, DEFENDANT cheated the competition by paying the
 19 CALIFORNIA CLASS less than the amount competitors paid who complied with the
 20 law and cheated the CALIFORNIA CLASS by not paying them in accordance with
 21 California law.

22 16. DEFENDANT as a matter of corporate policy, practice and procedure,
 23 intentionally, knowingly and systematically fails to reimburse and indemnify
 24 PLAINTIFF and the other CALIFORNIA CLASS Members for required business
 25 expenses incurred by PLAINTIFF and other CALIFORNIA CLASS Members in direct
 26 consequence of discharging their duties on behalf of DEFENDANT. Under California
 27 Labor Code Section 2802, employers are required to indemnify employees for all
 28 expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802

1 expressly states that "an employer shall indemnify his or her employee for all necessary
 2 expenditures or losses incurred by the employee in direct consequence of the discharge
 3 of his or her duties, or of his or her obedience to the directions of the employer, even
 4 though unlawful, unless the employee, at the time of obeying the directions, believed
 5 them to be unlawful."

6 17. In the course of their employment PLAINTIFF and other CALIFORNIA
 7 CLASS Members as a business expense, are required by DEFENDANT to use personal
 8 cellular phones as a result of and in furtherance of their job duties as employees for
 9 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
 10 associated with the use of the personal cellular phones for DEFENDANT's benefit. In
 11 order to work as a Delivery Driver for DEFENDANT, PLAINTIFF and other
 12 CALIFORNIA CLASS Members are required to use DEFENDANT's mobile application
 13 and as such it is mandatory to have a cell phone that is compatible with DEFENDANT's
 14 mobile application. As a result, in the course of their employment with DEFENDANT
 15 PLAINTIFF and other members of the CALIFORNIA CLASS incurred unreimbursed
 16 business expenses which include, but are not limited to, costs related to the use of their
 17 personal cellular phones all on behalf of and for the benefit of DEFENDANT. Further,
 18 PLAINTIFF and other CALIFORNIA CLASS Members are also not reimbursed or
 19 indemnified by DEFENDANT for the cost associated with using their personal vehicles
 20 while performing for DEFENDANT. As a result, in the course of their employment with
 21 DEFENDANT PLAINTIFF and other members of the CALIFORNIA CLASS incurred
 22 unreimbursed business expenses which include, but are not limited to, costs related to
 23 travel all on behalf of and for the benefit of DEFENDANT.

24 18. From time to time, DEFENDANT also fails to provide PLAINTIFF and the
 25 other members of the CALIFORNIA CLASS with complete and accurate wage
 26 statements which fail to show, among other things, the correct amount of time worked,
 27 including, work performed in excess of eight (8) hours in a workday and/or forty (40)
 28 hours in any workweek. Cal. Lab. Code § 226 provides that every employer shall

1 furnish each of his or her employees with an accurate itemized wage statement in writing
 2 showing, among other things, gross wages earned and all applicable hourly rates in effect
 3 during the pay period and the corresponding amount of time worked at each hourly rate.
 4 As a result, DEFENDANT provides PLAINTIFF and the other members of the
 5 CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

6 19. By reason of this uniform conduct applicable to PLAINTIFF and all the
 7 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition
 8 in violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200,
 9 *et seq.* (the "UCL"), by engaging in a company-wide policy, practice and procedure
 10 which fails to correctly classify PLAINTIFF and the CALIFORNIA CLASS Members
 11 as employees. The proper classification of these employees is DEFENDANT's burden.
 12 As a result of DEFENDANT's intentional disregard of the obligation to meet this burden,
 13 DEFENDANT failed to pay all required wages for work performed by PLAINTIFF and
 14 other CALIFORNIA CLASS Members and violated the California Labor Code and
 15 regulations promulgated thereunder as herein alleged.

16 20. Specifically as to PLAINTIFF, she has worked for DEFENDANT in
 17 California as a Delivery Driver and has been classified by DEFENDANT as an
 18 independent contractor June of 2017. Upon hire, the position of a Deliver Driver was
 19 represented by DEFENDANT to PLAINTIFF as an independent contractor position
 20 capable of paying an flat rate for scheduled shifts assigned by DEFENDANT.
 21 PLAINTIFF as a Delivery Driver, has been classified by DEFENDANT as an
 22 independent contractor and thus does not receive pay for all time worked, including
 23 overtime worked and does not receive reimbursement for all necessary business expenses
 24 incurred on DEFENDANT's behalf. During the CALIFORNIA CLASS PERIOD,
 25 PLAINTIFF has also been required to perform work as ordered by DEFENDANT for
 26 more than five (5) hours during a shift without receiving a meal or rest break as
 27 evidenced by daily time reports for PLAINTIFF. PLAINTIFF therefore forfeits meal
 28 and rest breaks without additional compensation and in accordance with DEFENDANT's

1 strict corporate policy and practice which does not provide for mandatory meal and rest
 2 breaks from time to time. The amount in controversy for PLAINTIFF individually does
 3 not exceed the sum or value of \$75,000.

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THE CALIFORNIA CLASS

6 PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
 7 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
 8 "UCL") as a Class Action, pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), on behalf
 9 of a California class, defined as all individuals who worked for DEFENDANT in
 10 California as Delivery Drivers and who were classified as independent contractors (the
 11 "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior
 12 to the filing of this Complaint and ending on the date as determined by the Court (the
 13 "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim
 14 of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

15 To the extent equitable tolling operates to toll claims by the CALIFORNIA
 16 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
 17 accordingly.

18 All CALIFORNIA CLASS Members who performed and continue to
 19 perform this work for DEFENDANT during the CALIFORNIA CLASS PERIOD are
 20 similarly situated in that they are subject to DEFENDANT's uniform policy and
 21 systematic practice that requires them to perform work without compensation as required
 22 by law.

23 DEFENDANT, as a matter of corporate, policy, practice and procedure, and
 24 in violation of the applicable California Labor Code, Industrial Welfare Commission
 25 ("IWC") Wage Order requirements, and the applicable provisions of California law,
 26 intentionally, knowingly and willfully engages in a practice whereby DEFENDANT
 27 unfairly, unlawfully and deceptively instituted a practice to ensure that all individuals
 28 employed as independent contractors are not properly classified as non-exempt

1 employees from the requirements of California Labor Code §§ 510, *et seq.*

2 25. During the CALIFORNIA CLASS PERIOD, DEFENDANT uniformly
 3 violated the rights of the PLAINTIFF and the CALIFORNIA CLASS Members under
 4 California law, without limitation, in the following manners:

- 5 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof.
 6 Code §§ 17200, *et seq.* the ("UCL"), in that DEFENDANT, while
 7 acting as employer, devised and implemented a scheme whereby
 8 PLAINTIFF and the CALIFORNIA CLASS Members are forced to
 9 unlawfully, unfairly and deceptively shoulder the cost of
 10 DEFENDANT's wages for all unpaid wages, business related
 11 expenses, and DEFENDANT's share of employment taxes, social
 12 security taxes, unemployment insurance and workers' compensation
 13 insurance;
- 14 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof.
 15 Code §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or
 16 deceptively having in place company policies, practices and
 17 procedures that uniformly misclassified PLAINTIFF and the
 18 CALIFORNIA CLASS Members as independent contractors;
- 19 (c) Violating the California Unfair Competition laws, Cal. Bus. & Prof.
 20 Code §§ 17200, *et seq.* the ("UCL"), by unlawfully, unfairly and/or
 21 deceptively failing to have in place a company policy, practice and
 22 procedure that accurately determined the amount of working time
 23 spent by PLAINTIFF and the CALIFORNIA CLASS Members
 24 performing non-exempt employee labor;
- 25 (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof.
 26 Code §§ 17200, *et seq.* the ("UCL"), by failing to provide
 27 PLAINTIFF and the other members of the CALIFORNIA CLASS
 28 with all legally required meal and rest breaks;

11 26. As a result of DEFENDANT's uniform policies, practices and procedures,
12 there are numerous questions of law and fact common to all CALIFORNIA CLASS
13 Members who worked for during the CALIFORNIA CLASS PERIOD. These questions
14 include, but are not limited, to the following:

- 15 (a) Whether PLAINTIFF and other CALIFORNIA CLASS Members
16 are misclassified as independent contractors by DEFENDANT;
17 (b) Whether the PLAINTIFF and the CALIFORNIA CLASS Members
18 are afforded all the protections of the California Labor Code that
19 apply when properly classified as non-exempt employees;
20 (c) Whether DEFENDANT's policies, practices and pattern of conduct
21 described in this Complaint was and is unlawful;
22 (d) Whether DEFENDANT unlawfully fails to pay their share of state
23 and federal employment taxes as required by state and federal tax
24 laws;
25 (e) Whether DEFENDANT's policy, practice and procedure of
26 classifying the CALIFORNIA CLASS Members as independent
27 contractors exempt from hourly wages laws for all time worked and
28 failing to pay the CALIFORNIA CLASS Members all amounts due

violates applicable provisions of California State law;

- (f) Whether DEFENDANT unlawfully fails to keep and furnish the CALIFORNIA CLASS Members with accurate records of all time worked;
- (g) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct; and,
- (h) Whether DEFENDANT's conduct was willful.

8 27. This Class Action meets the statutory prerequisites for the maintenance of
9 a Class Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

16 (c) The claims of the representative PLAINTIFF are typical of the claims
17 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the CALIFORNIA
18 CLASS Members, was classified as an independent contractor upon hiring based on the
19 defined corporate policies and practices and labors under DEFENDANT's systematic
20 procedure that failed to properly classify the PLAINTIFF and the CALIFORNIA CLASS
21 Members. PLAINTIFF sustained economic injury as a result of DEFENDANT's
22 employment practices. PLAINTIFF and the CALIFORNIA CLASS Members were and
23 are similarly or identically harmed by the same unlawful, unfair, deceptive and
24 persuasive pattern of misconduct engaged in by DEFENDANT by deceptively telling all
25 the CALIFORNIA CLASS Members that they were not entitled to minimum wages, the
26 employer's share of payment of payroll taxes and mandatory insurance, and
27 reimbursement for business expenses based on the defined corporate policies and
28 practices, and unfairly failed to pay these employees who were improperly classified as

1 independent contractors; and,

2 (d) The representative PLAINTIFF will fairly and adequately represent
3 and protect the interest of the CALIFORNIA CLASS, and has retained counsel who is
4 competent and experienced in Class Action litigation. There are no material conflicts
5 between the claims of the representative PLAINTIFF and the CALIFORNIA CLASS
6 Members that would make class certification inappropriate. Counsel for the
7 CALIFORNIA CLASS will vigorously assert the claims of all employees in the
8 CALIFORNIA CLASS.

9 28. In addition to meeting the statutory prerequisites to a Class Action, this
10 Action is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2)
11 and/or (3), in that:

12 (a) Without class certification and determination of declaratory,
13 injunctive, statutory and other legal questions within the class format, prosecution of
14 separate actions by individual members of the CALIFORNIA CLASS will create the risk
15 of:

16 (i) Inconsistent or varying adjudications with respect to individual
17 members of the CALIFORNIA CLASS which would establish incompatible standards
18 of conduct for the parties opposing the CALIFORNIA CLASS; and/or,

19 (ii) Adjudication with respect to individual members of the
20 CALIFORNIA CLASS which would as a practical matter be dispositive of the interests
21 of the other members not party to the adjudication or substantially impair or impeded
22 their ability to protect their interests.

23 (b) The parties opposing the CALIFORNIA CLASS have acted on
24 grounds generally applicable to the CALIFORNIA CLASS making appropriate
25 class-wide relief with respect to the CALIFORNIA CLASS as a whole in that
26 DEFENDANT uniformly classified and treated the CALIFORNIA CLASS Members as
27 independent contractors and, thereafter, uniformly failed to take proper steps to
28 determine whether the CALIFORNIA CLASS Members were properly classified as

1 independent contractors, and thereby denied these employees wages and payments for
2 business expenses and the employer's share of payroll taxes and mandatory insurance as
3 required by law.

28 || (vi) The basis of DEFENDANT's policies and practices uniformly

1 applied to all the CALIFORNIA CLASS Members.

2 29. The Court should permit this Action to be maintained as a Class Action
 3 pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3) because:

4 (a) The questions of law and fact common to the CALIFORNIA CLASS
 5 predominate over any question affecting only individual members;

6 (b) A Class Action is superior to any other available method for the fair
 7 and efficient adjudication of the claims of the members of the CALIFORNIA CLASS;

8 (c) The CALIFORNIA CLASS Members are so numerous that it is
 9 impractical to bring all CALIFORNIA CLASS Members before the Court;

10 (d) PLAINTIFF, and the CALIFORNIA CLASS Members, will not be
 11 able to obtain effective and economic legal redress unless the action is maintained as a
 12 Class Action;

13 (e) There is a community of interest in obtaining appropriate legal and
 14 equitable relief for the acts of unfair competition, statutory violations and other
 15 improprieties, and in obtaining adequate compensation for the damages and injuries
 16 which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;

17 (f) There is a community of interest in ensuring that the combined assets
 18 and available insurance of DEFENDANT are sufficient to adequately compensate the
 19 CALIFORNIA CLASS Members for any injuries sustained;

20 (g) DEFENDANT has acted or has refused to act on grounds generally
 21 applicable to the CALIFORNIA CLASS, thereby making final class-wide relief
 22 appropriate with respect to the CLASS as a whole;

23 (h) The members of the CALIFORNIA CLASS are readily ascertainable
 24 from the business records of DEFENDANT. The CALIFORNIA CLASS consists of all
 25 DEFENDANT's Delivery Drivers in California classified as independent contractors
 26 during the CALIFORNIA CLASS PERIOD and subjected to DEFENDANT's policies,
 27 practices and procedures as herein alleged; and,

28 (i) Class treatment provides manageable judicial treatment calculated to

1 bring an efficient and rapid conclusion to all litigation of all wage and hour related
2 claims arising out of DEFENDANT's conduct as to the CALIFORNIA CLASS
3 Members.

4 30. DEFENDANT maintains records from which the Court can ascertain and
5 identify by name and job title, each of DEFENDANT's employees who have been
6 systematically, intentionally and uniformly subjected to DEFENDANT's corporate
7 policies, practices and procedures as herein alleged. PLAINTIFF will seek leave to
8 amend the complaint to include any additional job titles of similarly situated employees
9 when they have been identified.

THE CALIFORNIA LABOR SUB-CLASS

12 31. PLAINTIFF further brings the Second, Third, Fourth and Fifth Causes of
13 Action on behalf of a California sub-class, defined as all members of the CALIFORNIA
14 CLASS who are or previously were employed by DEFENDANT in California as
15 Delivery Drivers and who were classified as Independent Contractors (the
16 “CALIFORNIA LABOR SUB-CLASS”) at any time during the period three (3) years
17 prior to the filing of the Complaint and ending on the date as determined by the Court
18 (the “CALIFORNIA LABOR SUB-CLASS PERIOD”) pursuant to Fed. R. Civ. Proc.
19 23(b)(2) and/or (3). The amount in controversy for the aggregate claim of
20 CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
21 (\$5,000,000.00).

22 32. DEFENDANT, as a matter of corporate policy, practice and procedure, and
23 in violation of the applicable California Labor Code (“Labor Code”), and Industrial
24 Welfare Commission (“IWC”) Wage Order requirements intentionally, knowingly, and
25 wilfully, on the basis of job title alone and without regard to the actual overall
26 requirements of the job, systematically classified PLAINTIFF and the other members
27 of the CALIFORNIA LABOR SUB-CLASS as independent contractors in order to avoid
28 the payment of all wages, and in order to avoid the obligations under the applicable

1 California Labor Code provisions. To the extent equitable tolling operates to toll claims
 2 by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA
 3 LABOR SUB-CLASS PERIOD should be adjusted accordingly.

4 33. DEFENDANT maintains records from which the Court can ascertain and
 5 identify by job title each of DEFENDANT's employees who as CALIFORNIA LABOR
 6 SUB-CLASS Members have been systematically, intentionally and uniformly
 7 misclassified as independent contractors as a matter of DEFENDANT's corporate policy,
 8 practices and procedures. PLAINTIFF will seek leave to amend the complaint to include
 9 these additional job titles when they have been identified.

10 34. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of
 11 all CALIFORNIA LABOR SUB-CLASS Members is impracticable.

12 35. DEFENDANT, as a matter of corporate policy, practice and procedure,
 13 erroneously classified all Delivery Drivers as independent contractors making these
 14 employees exempt from California labor laws. All Delivery Drivers, including
 15 PLAINTIFF, perform the same finite set of tasks and are paid by DEFENDANT
 16 according to uniform and systematic company procedures, which, as alleged herein
 17 above, fails to correctly pay minimum wage compensation. This business practice was
 18 uniformly applied to each and every member of the CALIFORNIA LABOR SUB-
 19 CLASS, and therefore, the propriety of this conduct can be adjudicated on a class-wide
 20 basis.

21 36. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-
 22 CLASS under California law by:

- 23 (a) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by
 24 misclassifying and thereby failing to pay PLAINTIFF and the
 25 members of the CALIFORNIA LABOR SUB-CLASS the correct
 26 minimum wages for which DEFENDANT is liable;
- 27 (b) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and
 28 thereby failing to pay PLAINTIFF and the members of the

1 CALIFORNIA LABOR SUB-CLASS the correct overtime pay for
 2 a workday longer than eight (8) hours and/or a workweek longer
 3 than forty (40) hours for which DEFENDANT is liable pursuant to
 4 Cal. Lab. Code § 1194;

- 5 (c) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFF
 6 and the members of the CALIFORNIA LABOR SUB-CLASS who
 7 are improperly classified as independent contractors with an accurate
 8 itemized statement in writing showing the gross wages earned, the
 9 net wages earned, all applicable hourly rates in effect during the pay
 10 period and the corresponding amount of time worked at each hourly
 11 rate by the employee; and,
- 12 (d) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
 13 and the CALIFORNIA CLASS members with necessary expenses
 14 incurred in the discharge of their job duties.

15 37. This Class Action meets the statutory prerequisites for the maintenance of
 16 a Class Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

- 17 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
 18 are so numerous that the joinder of all CALIFORNIA LABOR SUB-
 19 CLASS Members is impracticable and the disposition of their claims
 20 as a class will benefit the parties and the Court;
- 21 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
 22 issues that are raised in this Complaint are common to the
 23 CALIFORNIA LABOR SUB-CLASS and will apply uniformly to
 24 every member of the CALIFORNIA LABOR SUB-CLASS;
- 25 (c) The claims of the representative PLAINTIFF are typical of the
 26 claims of each member of the CALIFORNIA LABOR SUB-CLASS.
 27 PLAINTIFF, like all other members of the CALIFORNIA LABOR
 28 SUB-CLASS is improperly classified as an independent contractor

1 and was thus denied minimum wage pay and meal and rest breaks,
 2 among other things, as a result of DEFENDANT's systematic
 3 classification practices. PLAINTIFF and all other members of the
 4 CALIFORNIA LABOR SUB-CLASS sustained economic injuries
 5 arising from DEFENDANT's violations of the laws of California;
 6 and,

7 (d) The representative PLAINTIFF will fairly and adequately represent
 8 and protect the interest of the CALIFORNIA LABOR SUB-CLASS,
 9 and has retained counsel who are competent and experienced in
 10 Class Action litigation. There are no material conflicts between the
 11 claims of the representative PLAINTIFF and the members of the
 12 CALIFORNIA LABOR SUB-CLASS that would make class
 13 certification inappropriate. Counsel for the CALIFORNIA LABOR
 14 SUB-CLASS will vigorously assert the claims of all CALIFORNIA
 15 LABOR SUB-CLASS Members.

16 38. In addition to meeting the statutory prerequisites to a Class Action, this
 17 action is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2)
 18 and/or (3), in that:

19 (a) Without class certification and determination of declaratory,
 20 injunctive, statutory and other legal questions within the class
 21 format, prosecution of separate actions by individual members of the
 22 CALIFORNIA LABOR SUB-CLASS will create the risk of:
 23 1) Inconsistent or varying adjudications with respect to
 24 individual members of the CALIFORNIA LABOR SUB-
 25 CLASS which would establish incompatible standards of
 26 conduct for the parties opposing the CALIFORNIA LABOR
 27 SUB-CLASS; or,
 28 2) Adjudication with respect to individual members of the

1 CALIFORNIA LABOR SUB-CLASS which would as a
2 practical matter be dispositive of interests of the other
3 members not party to the adjudication or substantially impair
4 or impede their ability to protect their interests.

- 5 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
6 acted or refused to act on grounds generally applicable to the
7 CALIFORNIA LABOR SUB-CLASS, making appropriate class-
8 wide relief with respect to the CALIFORNIA LABOR SUB-CLASS
9 as a whole in that the DEFENDANT uniformly classified and treated
10 the members of the CALIFORNIA LABOR SUB-CLASS as
11 independent contractors and, thereafter, uniformly failed to take
12 proper steps to determine whether the CALIFORNIA LABOR SUB-
13 CLASS Members were properly classified as independent
14 contractors, and thereby denied these employees the protections
15 afforded to them under the California Labor Code;
- 16 (c) Common questions of law and fact predominate as to the members
17 of the CALIFORNIA LABOR SUB-CLASS, with respect to the
18 practices and violations of California law as listed above, and
19 predominate over any question affecting only individual
20 CALIFORNIA LABOR SUB-CLASS Members, and a Class Action
21 is superior to other available methods for the fair and efficient
22 adjudication of the controversy, including consideration of:
23 1) The interests of the members of the CALIFORNIA LABOR
24 SUB-CLASS in individually controlling the prosecution or
25 defense of separate actions in that the substantial expense of
26 individual actions will be avoided to recover the relatively
27 small amount of economic losses sustained by the individual
28 CALIFORNIA LABOR SUB-CLASS Members when

1 compared to the substantial expense and burden of individual
2 prosecution of this litigation;

3 2) Class certification will obviate the need for unduly duplicative
4 litigation that would create the risk of:

5 A. Inconsistent or varying adjudications with respect to
6 individual members of the CALIFORNIA LABOR
7 SUB-CLASS, which would establish incompatible
8 standards of conduct for the DEFENDANT; and/or,

9 B. Adjudications with respect to individual members of
10 the CALIFORNIA LABOR SUB-CLASS would as a
11 practical matter be dispositive of the interests of the
12 other members not parties to the adjudication or
13 substantially impair or impede their ability to protect
14 their interests;

15 3) In the context of wage litigation because a substantial number
16 of individual CALIFORNIA LABOR SUB-CLASS Members
17 will avoid asserting their legal rights out of fear of retaliation
18 by DEFENDANT, which may adversely affect an individual's
19 job with DEFENDANT or with a subsequent employer, the
20 Class Action is the only means to assert their claims through
21 a representative; and,

22 4) A class action is superior to other available methods for the
23 fair and efficient adjudication of this litigation because class
24 treatment will obviate the need for unduly and unnecessary
25 duplicative litigation that is likely to result in the absence of
26 certification of this action pursuant to Fed. R. Civ. Proc.
27 23(b)(2) and/or (3).

28 39. This Court should permit this action to be maintained as a Class Action

1 pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3) because:

- 2 (a) The questions of law and fact common to the CALIFORNIA
3 LABOR SUB-CLASS predominate over any question affecting only
4 individual CALIFORNIA LABOR SUB-CLASS Members;
- 5 (b) A Class Action is superior to any other available method for the fair
6 and efficient adjudication of the claims of the members of the
7 CALIFORNIA LABOR SUB-CLASS because in the context of
8 employment litigation a substantial number of individual
9 CALIFORNIA LABOR SUB-CLASS Members will avoid asserting
10 their rights individually out of fear of retaliation or adverse impact
11 on their employment;
- 12 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
13 numerous that it is impractical to bring all members of the
14 CALIFORNIA LABOR SUB-CLASS before the Court;
- 15 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
16 Members, will not be able to obtain effective and economic legal
17 redress unless the action is maintained as a Class Action;
- 18 (e) There is a community of interest in obtaining appropriate legal and
19 equitable relief for the acts of unfair competition, statutory violations
20 and other improprieties, and in obtaining adequate compensation for
21 the damages and injuries which DEFENDANT's actions have
22 inflicted upon the CALIFORNIA LABOR SUB-CLASS;
- 23 (f) There is a community of interest in ensuring that the combined assets
24 of DEFENDANT are sufficient to adequately compensate the
25 members of the CALIFORNIA LABOR SUB-CLASS for the
26 injuries sustained;
- 27 (g) DEFENDANT has acted or refused to act on grounds generally
28 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby

1 making final class-wide relief appropriate with respect to the
2 CALIFORNIA LABOR SUB-CLASS as a whole;

- 3 (h) The members of the CALIFORNIA LABOR SUB-CLASS are
4 readily ascertainable from the business records of DEFENDANT.
5 The CALIFORNIA LABOR SUB-CLASS consists of all
6 CALIFORNIA CLASS Members who are or previously were
7 employed by DEFENDANT in California as Delivery Drivers and
8 classified as independent contractors during the CALIFORNIA
9 LABOR SUB-CLASS PERIOD; and,
- 10 (i) Class treatment provides manageable judicial treatment calculated to
11 bring a efficient and rapid conclusion to all litigation of all wage and
12 hour related claims arising out of the conduct of DEFENDANT.

13

14 **JURISDICTION AND VENUE**

15 40. This Action is brought as a Class Action on behalf of similarly situated
16 employees of DEFENDANT pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3).

17 41. Venue is proper in this Court and judicial district pursuant to 28 U.S.C. §
18 1391 because (i) DEFENDANT conducts and conducted substantial business within this
19 judicial district and maintains offices in this judicial district, (ii) the causes of action
20 alleged herein arise in whole or in part in this judicial district, and (iii) DEFENDANT
21 committed wrongful conduct against members of this class in this district. Venue is also
22 proper in this district because the complaint was initially filed in the Superior Court of
23 California, County of San Diego, but was later removed by DEFENDANT to this Court.

FIRST CAUSE OF ACTION
For Unlawful, Unfair and Deceptive Business Practices
[Cal. Bus. & Prof. Code §§ 17200, *et seq.*]

(By PLAINTIFF and the CLASS and Against All Defendants)

5 42. PLAINTIFF and the CALIFORNIA CLASS Members reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 43. DEFENDANT is a "person" as that term is defined under Cal. Bus. & Prof.
9 Code § 17021.

10 44. Section 17200 of the California Business & Professions Code defines unfair
11 competition as any unlawful, unfair or fraudulent business act or practice. Section 17200
12 applies to violations of labor laws in the employment context. Section 17203 authorizes
13 injunctive, declaratory and/or other equitable relief with respect to unfair competition as
14 follows:

15 Any person who engages, has engaged, or proposes to engage in unfair
16 competition may be enjoined in any court of competent jurisdiction. The
17 court may take such orders or judgments, including the appointment of a
18 receiver, as may be necessary to prevent the use or employment by any
person of any practice which constitutes unfair competition, as defined in
this chapter, or as may be necessary to restore to any person in interest any
money or property, real or personal, which may have been acquired by
means of such unfair competition.

California Business & Professions Code § 17203.

45. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to the applicable Industrial Wage Orders, the California Labor Code including Sections 204, 221, 226.7, 226.8, 510, 512, 1194, 1197, 1197.1, 1198, & 2802, and California Code of Regulations § 11090, for which this Court should issue declaratory, injunctive, and other equitable relief, pursuant to Cal. Bus. & Prof § 17203, as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld, business expenses wrongfully withheld and

1 for the payment of the employer's share of income taxes, social security taxes,
 2 unemployment insurance and workers' compensation insurance.

3 46. By the conduct alleged herein DEFENDANT has obtained valuable
 4 property, money, and services from PLAINTIFF, and the other members of the
 5 CALIFORNIA CLASS, and has deprived them of valuable rights and benefits
 6 guaranteed by law, all to their detriment and to the benefit of DEFENDANT so as to
 7 allow DEFENDANT to unfairly compete. Declaratory and injunctive relief is necessary
 8 to prevent and remedy this unfair competition, and pecuniary compensation alone would
 9 not afford adequate and complete relief.

10 47. All the acts described herein as violations of, among other things, the
 11 California Labor Code, California Code of Regulations and the Industrial Welfare
 12 Commission Wage Orders, were unlawful, are in violation of public policy, are immoral,
 13 unethical, oppressive, and unscrupulous, and are likely to deceive employees, and
 14 thereby constitute deceptive, unfair and unlawful business practices in violation of Cal.
 15 Bus. and Prof. Code §§ 17200, *et seq.*

16 48. By the conduct alleged herein, DEFENDANT's practices are deceptive and
 17 fraudulent in that DEFENDANT's uniform policy and practice is to represent to the
 18 CALIFORNIA CLASS Members that they are not entitled to overtime and minimum
 19 wages, payment for payroll taxes or mandatory insurance and other benefits as required
 20 by California law, when in fact these representations are false and likely to deceive and
 21 for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus.
 22 & Prof. Code § 17203, including restitution of wages wrongfully withheld.

23 49. By the conduct alleged herein, DEFENDANT's practices are also unlawful,
 24 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF
 25 and the other members of the CALIFORNIA CLASS to be underpaid during their
 26 employment with DEFENDANT.

27 50. PLAINTIFF and the other members of the CALIFORNIA CLASS are
 28 entitled to, and do, seek such relief as may be necessary to restore to them the money and

1 property which DEFENDANT has acquired, or of which PLAINTIFF and the other
 2 members of the CALIFORNIA CLASS have been deprived, by means of the above
 3 described unlawful and unfair business practices, including earned but unpaid wages for
 4 all time worked.

5 51. PLAINTIFF and the other members of the CALIFORNIA CLASS are
 6 further entitled to, and do, seek a declaration that the described business practices are
 7 unlawful, unfair and deceptive, and that injunctive relief should be issued restraining
 8 DEFENDANT from engaging in any unlawful and unfair business practices in the future.

9 52. By the conduct alleged herein, DEFENDANT's practices are also unlawful,
 10 unfair and deceptive in that DEFENDANT's uniform policies, practices and procedures
 11 fail to provide all legally required meal and rest breaks to PLAINTIFF and the other
 12 members of the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

13 53. Therefore, PLAINTIFF demands on behalf of herself and on behalf of each
 14 CALIFORNIA CLASS member, minimum wages, payment for the employer's share of
 15 payroll taxes and mandatory insurance, and one (1) hour of pay for each workday in
 16 which an off-duty meal period was not timely provided for each five (5) hours of work,
 17 and/or one (1) hour of pay for each workday in which a second off-duty meal period was
 18 not timely provided for each ten (10) hours of work.

19 54. PLAINTIFF further demands on behalf of herself and each member of the
 20 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which
 21 a rest period was not timely provided as required by law.

22 55. By and through the unlawful and unfair business practices described herein,
 23 DEFENDANT has obtained valuable property, money and services from PLAINTIFF
 24 and the other members of the CALIFORNIA CLASS, including earned wages for all
 25 time worked and has deprived them of valuable rights and benefits guaranteed by law
 26 and contract, all to the detriment of these employees and to the benefit of DEFENDANT
 27 so as to allow DEFENDANT to unfairly compete against competitors who comply with
 28 the law.

1 56. All the acts described herein as violations of, among other things, the
2 Industrial Welfare Commission Wage Orders, the California Code of Regulations, and
3 the California Labor Code, are unlawful and in violation of public policy, are immoral,
4 unethical, oppressive and unscrupulous, are deceptive, and thereby constitute unlawful,
5 unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200
6 *et seq.*

7 57. PLAINTIFF and the other members of the CALIFORNIA CLASS are
8 entitled to, and do, seek such relief as may be necessary to restore to them the money and
9 property which DEFENDANT has acquired, or of which PLAINTIFF and the other
10 members of the CALIFORNIA CLASS have been deprived, by means of the above
11 described unlawful and unfair business practices.

12 58. PLAINTIFF and the other members of the CALIFORNIA CLASS are
13 further entitled to, and do, seek a declaration that the described business practices are
14 unlawful, unfair and deceptive, and that injunctive relief should be issued restraining
15 DEFENDANT from engaging in any unlawful and unfair business practices in the future.

16 59. PLAINTIFF and the other members of the CALIFORNIA CLASS have no
17 plain, speedy and/or adequate remedy at law that will end the unlawful and unfair
18 business practices of DEFENDANT. Further, the practices herein alleged presently
19 continue to occur unabated. As a result of the unlawful and unfair business practices
20 described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS have
21 suffered and will continue to suffer irreparable legal and economic harm unless
22 DEFENDANT is restrained from continuing to engage in these unlawful and unfair
23 business practices.

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SECOND CAUSE OF ACTION

For Failure To Pay Minimum Wages

[Cal. Lab. Code §§ 1194, 1197 and 1197.1]

**(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
and Against All Defendants)**

6 60. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
7 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the
8 prior paragraphs of this Complaint.

9 61. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
10 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
11 California Labor Code and the Industrial Welfare Commission requirements for
12 DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF
13 and CALIFORNIA CLASS Members.

14 62. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
15 public policy, an employer must timely pay its employees for all hours worked.

16 63. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed
17 by the commission is the minimum wage to be paid to employees, and the payment of
18 a less wage than the minimum so fixed is unlawful.

19 64. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
20 wages, including minimum wage compensation and interest thereon, together with the
21 costs of suit.

22 65. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF
23 and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to
24 the correct amount of time they worked. As set forth herein, DEFENDANT's uniform
25 policy and practice is to unlawfully and intentionally deny timely payment of wages due
26 to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

27 66. DEFENDANT's uniform pattern of unlawful wage and hour practices
28 manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS

1 as a whole, as a result of implementing a uniform policy and practice that denied
 2 accurate compensation to PLAINTIFF and the other members of the CALIFORNIA
 3 LABOR SUB-CLASS in regards to minimum wage pay.

4 67. In committing these violations of the California Labor Code, DEFENDANT
 5 inaccurately calculates the correct time worked and consequently underpays the actual
 6 time worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-
 7 CLASS. DEFENDANT acted in an illegal attempt to avoid the payment of all earned
 8 wages, and other benefits in violation of the California Labor Code, the Industrial
 9 Welfare Commission requirements and other applicable laws and regulations.

10 68. As a direct result of DEFENDANT's unlawful wage practices as alleged
 11 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
 12 do not receive the correct minimum wage compensation for their time worked for
 13 DEFENDANT.

14 69. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF
 15 and the other members of the CALIFORNIA LABOR SUB-CLASS are paid less for
 16 time worked that they are entitled to, constituting a failure to pay all earned wages.

17 70. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
 18 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR
 19 SUB-CLASS for the true time they worked, PLAINTIFF and the other members of the
 20 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an
 21 economic injury in amounts which are presently unknown to them and which will be
 22 ascertained according to proof at trial.

23 71. DEFENDANT knew or should have known that PLAINTIFF and the other
 24 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their
 25 time worked. DEFENDANT systematically elected, either through intentional
 26 malfeasance or gross nonfeasance, to not pay PLAINTIFF and other CALIFORNIA
 27 LABOR SUB-CLASS Members for their labor as a matter of uniform company policy,
 28 practice and procedure, and DEFENDANT perpetrated this systematic scheme by

1 refusing to pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
2 CLASS the correct minimum wages for their time worked.

3 72. In performing the acts and practices herein alleged in violation of California
4 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR
5 SUB-CLASS for all time worked and provide them with the requisite compensation,
6 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously
7 toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
8 with a conscious of and utter disregard for their legal rights, or the consequences to them,
9 and with the despicable intent of depriving them of their property and legal rights, and
10 otherwise causing them injury in order to increase company profits at the expense of
11 these employees.

12 73. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
13 CLASS therefore request recovery of all unpaid wages, according to proof, interest,
14 statutory costs, as well as the assessment of any statutory penalties against
15 DEFENDANT, in a sum as provided by the California Labor Code and/or other
16 applicable statutes. To the extent minimum wage compensation is determined to be
17 owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their
18 employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and
19 therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
20 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR
21 SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful,
22 intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA
23 LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

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1 **THIRD CAUSE OF ACTION**
 2 **For Failure To Pay Overtime Wages**
 3 **[Cal. Lab. Code §§ 510, 1194, & 1198]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All
 5 Defendants)**

6 74. PLAINTIFF and the CALIFORNIA CLASS Members reallege and
 7 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
 8 Complaint.

9 75. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
 10 failed to pay PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members
 11 overtime wages for the time they worked in excess of the maximum hours permissible
 12 by law as required by Cal. Lab. Code §§ 510 & 1198, even though PLAINTIFF and the
 13 CALIFORNIA LABOR SUB-CLASS Members were regularly required to work, and
 14 did in fact work, overtime that DEFENDANT never recorded as evidenced by
 15 DEFENDANT's business records and witnessed by DEFENDANT's employees.

16 76. By virtue of DEFENDANT's unlawful failure to pay compensation to
 17 PLAINTIFF and the CALIFORNIA CLASS Members for all overtime worked by these
 18 employees, PLAINTIFF and CALIFORNIA CLASS Members have suffered, and will
 19 continue to suffer, an economic in amounts which are presently unknown to them and
 20 which can be ascertained according to proof at trial.

21 77. DEFENDANT knew or should have known that PLAINTIFF and the
 22 CALIFORNIA CLASS Members are misclassified as independent contractors and
 23 DEFENDANT's systematically elected, either through intentional malfeasance or gross
 24 nonfeasance, not to pay them for their labor as a matter of uniform corporate policy,
 25 practice and procedure.

26 78. PLAINTIFF and the CALIFORNIA CLASS Members therefore request
 27 recovery of all compensation according to proof, interest, costs, as well as the assessment
 28 of any statutory penalties against DEFENDANT in a sum as provided by the California

1 Labor Code and/or other statutes. To the extent overtime compensation is determined
2 to be owed to the CALIFORNIA CLASS Members who have terminated their
3 employment, these employees would also be entitled to waiting time penalties under Cal.
4 Lab. Code § 203, which penalties are sought herein. Further, PLAINTIFF and the
5 CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory
6 costs.

7 79. In performing the acts and practices herein alleged in violation of California
8 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR
9 SUB-CLASS for all overtime worked and provide them with the requisite overtime
10 compensation, DEFENDANT acted and continues to act intentionally, oppressively, and
11 maliciously toward PLAINTIFF and the other members of the CALIFORNIA LABOR
12 SUB-CLASS with a conscious of and utter disregard for their legal rights, or the
13 consequences to them, and with the despicable intent of depriving them of their property
14 and legal rights, and otherwise causing them injury in order to increase corporate profits
15 at the expense of these employees.

FOURTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

20 (By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All
21 Defendants)

22 80. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
23 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the
24 prior of this Complaint.

25 81. Cal. Labor Code § 226 provides that an employer must furnish employees
26 with an “accurate itemized statement in writing showing:

- 27 (1) gross wages earned,
28 (2) total hours worked by the employee, except for any employee whose

1 compensation is solely based on a salary and who is exempt from payment of
 2 overtime under subdivision (a) of Section 515 or any applicable order of the
 3 Industrial Welfare Commission,

4 (3) the number of piece-rate units earned and any applicable piece rate if the
 5 employee is paid on a piece-rate basis,

6 (4) all deductions, provided that all deductions made on written orders of the
 7 employee may be aggregated and shown as one item,

8 (5) net wages earned,

9 (6) the inclusive dates of the period for which the employee is paid,

10 (7) the name of the employee and his or her social security number, except that by
 11 January 1, 2008, only the last four digits of his or her social security number or
 12 an employee identification number other than a social security number may be
 13 shown on the itemized statement,

14 (8) the name and address of the legal entity that is the employer, and

15 (9) all applicable hourly rates in effect during the pay period and the
 16 corresponding number of hours worked at each hourly rate by the employee.”

17 82. From time to time, DEFENDANT violated Labor Code § 226, in that
 18 DEFENDANT failed and continues to fail to properly and accurately itemize the amount
 19 of time worked by PLAINTIFF, and the other members of the CALIFORNIA LABOR
 20 SUB-CLASS at the effective rates of pay. DEFENDANT also violated Labor Code
 21 Section 226 in that DEFENDANT fails to properly and accurately itemize the amount
 22 of penalties paid to PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS
 23 Members when they miss their meal and rest breaks. Aside from the violations listed
 24 above in this paragraph, DEFENDANT fails to issue PLAINTIFF an itemized wage
 25 statement that lists all the requirements under California Labor Code §226 *et. seq.*

26 83. DEFENDANT knowingly and intentionally fails to comply with Labor
 27 Code § 226, causing damages to PLAINTIFF, and the other members of the
 28 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to,

1 costs expended calculating the true amount of time worked and the amount of
2 employment taxes which were not properly paid to state and federal tax authorities.
3 These damages are difficult to estimate. Therefore, PLAINTIFF, and the other members
4 of the CALIFORNIA LABOR SUB-CLASS elect to recover liquidated damages of
5 \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each
6 violation in subsequent pay period pursuant to Labor Code § 226, in an amount
7 according to proof at the time of trial (but in no event more than \$4,000.00 for
8 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS
9 herein).

FIFTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses [Cal. Lab. Code § 2802]

**(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All
Defendants)**

84. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 79 of this Complaint.

^{85.} Cal. Lab. Code § 2802 provides, in relevant part, that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

86. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. Specifically, DEFENDANT fails to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which include, but are not limited to, the cost associated with the use of their personal cellular phones for

1 DEFENDANT's benefit. In order to work as a Deliver Driver for DEFENDANT,
2 PLAINTIFF and other CALIFORNIA CLASS Members are required to use
3 DEFENDANT's mobile application and as such it is mandatory to have a cell phone that
4 is compatible with DEFENDANT's mobile application. As a result, in the course of
5 their employment with DEFENDANT, PLAINTIFF and other members of the
6 CALIFORNIA LABOR SUB-CLASS incurred unreimbursed business expenses which
7 include, but are not limited to, the costs related to the use of their personal cellular
8 phones all on behalf of and for the benefit of DEFENDANT. Further, PLAINTIFF and
9 other CALIFORNIA LABOR SUB-CLASS Members are also not reimbursed or
10 indemnified by DEFENDANT for the cost associated with using their personal vehicles
11 while making deliveries for DEFENDANT. As a result, in the course of their
12 employment with DEFENDANT PLAINTIFF and other members of the CALIFORNIA
13 CLASS incurred unreimbursed business expenses which include, but are not limited to,
14 costs related to travel all on behalf of and for the benefit of DEFENDANT. These
15 expenses are necessary to complete their principal job duties. DEFENDANT is estopped
16 by DEFENDANT's conduct to assert any waiver of this expectation. Although these
17 expenses are necessary expenses incurred by PLAINTIFF and the CALIFORNIA
18 LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse
19 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses
20 as an employer is required to do under the laws and regulations of California.

21 87. PLAINTIFF therefore demands reimbursement for expenditures or losses
22 incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the
23 discharge of their job duties for DEFENDANT, or their obedience to the directions of
24 DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.
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SIXTH CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, et seq.]

(By Plaintiff and Against All Defendants)

88. Plaintiff incorporates by reference the allegations set forth in paragraphs 1-87, supra, as though fully set forth at this point.

89. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1.

90. Plaintiff, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to herself and all individuals who are or previously were employed by DEFENDANT as Delivery Drivers and classified as independent contractors in California during the time period of August 9, 2016 until the present (the "AGGRIEVED EMPLOYEES").

91. On August 11, 2017, Plaintiff gave written notice by electronic mail to the Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. *See Exhibit #1*, attached hereto and incorporated by this reference herein. The statutory waiting period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff may now

1 commence a representative civil action under PAGA pursuant to Section 2699 as the
2 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as
3 herein defined.

4 92. The policies, acts and practices heretofore described were and are an
5 unlawful business act or practice because Defendant (a) failed to properly record and pay
6 Plaintiff and the other AGGRIEVED EMPLOYEES for all of the hours they worked,
7 including overtime hours in violation of the Wage Order, (b) failed to provide accurate
8 itemized wage statements, and (c) failed to timely pay wages, all in violation of the
9 applicable Labor Code sections listed in Labor Code §2699.5, including but not limited
10 to Labor Code §§ 204, 226(a), 226.7, 226.8, 256, 510, 512, 558, 1194, 1197, 1197.1,
11 1198, 2802 and the applicable Industrial Wage Order(s), and thereby gives rise to
12 statutory penalties as a result of such conduct. Plaintiff hereby seeks recovery of civil
13 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
14 representative of the State of California for the illegal conduct perpetrated on Plaintiff
15 and the other AGGRIEVED EMPLOYEES.

PRAYER FOR RELIEF

18 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly
19 and severally, as follows:

20 || 1. On behalf of the CALIFORNIA CLASS:

- 21 A) That the Court certify the First Cause of Action asserted by the
22 CALIFORNIA CLASS as a class action pursuant to Fed. R. Civ. Proc.
23 23(b)(2) and/or (3);
24 B) An order temporarily, preliminarily and permanently enjoining and
25 restraining DEFENDANT from engaging in similar unlawful conduct as set
26 forth herein;
27 C) An order requiring DEFENDANT to pay minimum wages and all sums
28 unlawfully withheld from compensation due to PLAINTIFF and the other

- 1 members of the CALIFORNIA CLASS; and,
- 2 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid
3 fund for restitution of the sums incidental to DEFENDANT's violations
4 due to PLAINTIFF and to the other members of the CALIFORNIA
5 CLASS.
- 6 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 7 A) That the Court certify the Second, Third, Fourth and Fifth Causes of Action
8 asserted by the CALIFORNIA LABOR SUB-CLASS as a class action
9 pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);
- 10 B) Compensatory damages, according to proof at trial, including compensation
11 due PLAINTIFF and the other members of the CALIFORNIA LABOR
12 SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS
13 PERIOD plus interest thereon at the statutory rate;
- 14 C) The wages of all terminated individuals in the CALIFORNIA LABOR
15 SUB-CLASS as a penalty from the due date thereof at the same rate until
16 paid or until an action therefore is commenced, in accordance with Cal.
17 Lab. Code § 203;
- 18 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay
19 period in which a violation occurs and one hundred dollars (\$100) per each
20 member of the CALIFORNIA LABOR SUB-CLASS for each violation in
21 a subsequent pay period, not exceeding an aggregate penalty of four
22 thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab.
23 Code § 226; and,
- 24 E) The amount of the expenses PLAINTIFF and each member of the
25 CALIFORNIA LABOR SUBCLASS incurred in the course of their job
26 duties, plus interest, and costs of suit.
- 27 3. On behalf of the State of California and with respect to all AGGRIEVED
28 EMPLOYEES:

- 1 A) Recovery of civil penalties as prescribed by the Labor Code Private
2 Attorneys
3 General Act of 2004
4. On all claims:
5 A) An award of interest, including prejudgment interest at the legal rate;
6 B) Such other and further relief as the Court deems just and equitable; and,
7 C) An award of penalties, attorneys' fees and cost of suit, as allowable under
8 the law, including, but not limited to, pursuant to Labor Code §218.5, §226
9 and/or §1194, and/or §2802.

10
11 Dated: October 17, 2017 BLUMENTHAL, NORDREHAUG & BHOWMIK
12 LLP
13
14 By: /s/ Norman Blumenthal
15 Norman B. Blumenthal
16 Attorneys for Plaintiff
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1 **DEMAND FOR JURY TRIAL**
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4 PLAINTIFF demands a jury trial on issues triable to a jury.
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7 Dated: October 17, 2017
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9 BLUMENTHAL, NORDREHAUG & BHOWMIK
10 LLP
11

12 By: /s/ Norman Blumenthal
13 Norman B. Blumenthal
14 Attorneys for Plaintiff
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